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JUL 24 2006

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CENTRAL DISTRICT OF CALIFORNIA
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JUL 25 2006

CLERK U.S. BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
BY Deputy Clerk

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA

In re

KHIM LAM and AI XIEM TRIEU,

Debtors.

Case No. LA 05-18914 TD

Adv. No. LA 05-02221 TD

Chapter 7

FINDINGS OF FACT AND
CONCLUSIONS OF LAW

DAVID L. RAY, Chapter 7 Trustee,

Plaintiff,

v.

KHIM LAM and AI XIEM TRIEU,

Defendants.

DATE: June 26, 2006
TIME: 9:00 a.m.
PLACE: Courtroom 1345

The Complaint To Revoke Discharge, filed by David L. Ray, Chapter 7 Trustee (the Trustee), came on regularly for trial on June 26, 2006.

Having considered the testimony of the witnesses, the exhibits admitted into

1 evidence, and the arguments of counsel, I make the following findings of fact and
2 conclusions of law in support of judgment in favor of defendants Khim Lam and Ai
3 Xiem Trieu (the Lams).

4

5 **FINDINGS OF FACT**

6 On April 22, 2005 (Petition Date), the Lams filed a voluntary Chapter 7 petition.¹

7 On May 23, 2005, the Lams signed and filed their bankruptcy papers, including
8 their Schedules (Summary Of Schedules and Schedules A - J) and Statement Of
9 Financial Affairs. The Lams did not list an ownership interest in 4006 Tyler Avenue, El
10 Monte, California 91731 (Tyler Avenue Property) in their bankruptcy schedules. The
11 Lams did not list a debt to Far East National Bank (Home Equity Lender) in their
12 bankruptcy schedules.

13 On or about July 5, 2005, the Lams appeared for their Section 341(a) Creditors
14 Meeting and, during the course of the meeting, stated under penalty of perjury that
15 they had listed all their assets and all their creditors in their Schedules.

16 The last date for a party to object to the Lams' discharge or the dischargeability
17 of any of the Lams' prepetition debt was July 22, 2005, but as of that date, the clerk of
18 the bankruptcy court had not yet entered the Lams' discharge.

19 As of July 22, 2005, the Trustee had no knowledge of any interest of the Lams
20 in the Tyler Avenue Property or Lams' participation in the 2003 home equity loan.

21 The attorney for the Trustee received a letter dated August 4, 2005, from
22 counsel for American Premier Bank, notifying him of the existence of the Lams'

23

24

25 ¹ All chapter and section references herein are to the Bankruptcy Code, 11 U.S.C. §§ 101-1330,
26 unless otherwise specifically indicated.

1 interest in the Tyler Avenue Property.²

2 On September 30, 2005, the Trustee filed a Complaint To Revoke Discharge
3 (Discharge Revocation Complaint) because the Lams omitted assets and creditors
4 from their Schedules. By the Discharge Revocation Complaint, the Trustee sought to
5 revoke the Lams' discharge pursuant to § 727(d)(1) and § 727(d)(2).

6 The Lams are husband and wife and were refugees from Southeast Asia who
7 completed the sixth grade in Vietnam and did not attend high school.

8 Zhaoqing Huang is a Buddhist monk who does not speak or read much
9 English.

10 Huang purchased the Tyler Avenue Property in August 1998, using his own
11 money for the down payment. He signed a promissory note for the balance of the
12 purchase price and also signed a deed of trust, both in favor of Republic Consumer
13 Lending Group, Inc., in connection with the purchase.

14 Huang uses the Tyler Avenue Property as a temple, known as the American
15 South Sea Pu Tuo Mountain Temple, and lives at the Tyler Avenue Property.

16 Huang has made all monthly mortgage payments on the purchase money, first
17 mortgage loan secured by the Tyler Avenue Property as well as all real estate tax and
18 homeowner's insurance payments relating to the Tyler Avenue Property.

19 The Lams have known Huang since 1995. The Lams worship at the American
20 South Sea Pu Tuo Mountain Temple.

21 For reasons presently unknown to him and unexplained by the evidence,
22 Huang executed a Grant Deed to the Tyler Avenue Property (Tyler Avenue Joint
23 Tenancy Deed) granting the Tyler Avenue Property to Khim Lam, Ai Xiem Trieu, and

25 _____
26 ² I admitted the letter as Exhibit 4, over the Lams' objection, solely for purposes of the section of the
letter on page 2 entitled "Undisclosed Parcel of Real Property - 4007 Tyler Ave."

1 himself, as joint tenants. The Tyler Avenue Joint Tenancy Deed was recorded on
2 September 1, 1998. Neither of the Lams paid any money to Huang at any time in
3 connection with the making of the Tyler Avenue Joint Tenancy Deed. There was no
4 explanation in the testimony of any witness or in the documentary evidence, as to the
5 reason for the Tyler Avenue Joint Tenancy Deed. Huang and the Lams testified that
6 they had no recollection concerning the subject, and the Trustee offered no testimony
7 or documentary evidence to explain the reason for or the circumstances that led to
8 Huang's Tyler Avenue Joint Tenancy Deed.

9 Neither of the Lams has ever lived at the Tyler Avenue Property. Neither of the
10 Lams has ever made any payment to the first mortgage lender, Republic Consumer
11 Lending Group, Inc., or for real property taxes assessed against the Tyler Avenue
12 Property, or for homeowner's insurance coverage on the Tyler Avenue Property.

13 In April 2003, the Lams assisted Huang in obtaining a line of credit from Far
14 East National Bank (Home Equity Lender). The Lams opened a checking account at
15 Far East National Bank in connection with the home equity loan to accommodate
16 Huang. The Lams signed a Home Equity Line of Credit Agreement in favor of Far
17 East National Bank on or about April 28, 2003, secured by a second priority deed of
18 trust against the Tyler Avenue Property, in favor of Far East National Bank. The
19 money advanced from the line of credit was deposited in an account in the Lams'
20 name, but Mr. Lam testified that the entire proceeds of the home equity loan were
21 used to repay loans from third parties made and used to assist Huang's mother in
22 China. I find Mr. Lam's testimony concerning such payments to be somewhat vague
23 but credible. The Trustee chose not to challenge Mr. Lam's testimony about the loans
24 from, or payments to third parties, or that Huang's mother was the ultimate beneficiary
25 of the home equity loan proceeds. The Trustee's evidence neither attempted to
establish nor proved that the Lams received any benefit from the home equity loan. I

1 infer from the evidence that the Lams signed the loan papers out of personal, non-
2 monetary concern for Huang's welfare and peace of mind and without any financial
3 motive on the part of the Lams.

4 Cross examination of the Lams focused on several checks, all in the \$300-400
5 range, drawn by Mr. Lam, payable to the Home Equity Lender. Mr. Lam explained
6 that the checks were written as an accommodation to Huang to ensure timely payment
7 of interest on the home equity loan and that each check was fully reimbursed to the
8 Lams by Huang. Again, the Trustee did not challenge Mr. Lam's testimony about the
9 purpose of the Lam checks or Huang's reimbursement payments to the Lams.

10 On May 23, 2005, the Lams met with their bankruptcy lawyer, reviewed their
11 bankruptcy papers, and signed the papers under penalty of perjury stating that the
12 information set forth in the bankruptcy papers was "true and correct to the best of
13 [their] knowledge, information, and belief."

14 The Lams intended to and did disclose in their bankruptcy papers (a) their
15 ownership in their residence located at 4016 Clark Avenue in El Monte, with an
16 estimated market value of \$325,000; (b) their bank accounts, including the Lams'
17 checking account at Far East National Bank from which a few interest payments on
18 the home equity loan were advanced on behalf of Huang; (c) the Lams' brokerage
19 accounts; and (d) \$90,440 in funds on deposit in the Lams' attorney's trust account.

20 The Lams did not list the Tyler Avenue Property in their bankruptcy papers
21 because, as they each explained, they never considered themselves to be owners of
22 the Tyler Avenue Property.

23 The Lams did not list a debt to Far East National Bank, the Home Equity
24 Lender, in their bankruptcy papers because they believed the debt to be Huang's debt
25 rather than their debt. The Lams also believed the money advanced from the line of
26 credit from Far East National Bank was used directly for the sole benefit of Huang and

1 his mother and that payment of the line of credit was secured the Tyler Avenue
2 Property owned solely by Huang.

3 When the Lams stated under oath at their Creditors Meeting that they had
4 listed all of their assets and all of their liabilities in their bankruptcy schedules, and
5 when the Lams testified at trial, they believed their statements were true and
6 accurate.

7 The Trustee asserts that the Lams' conduct in signing their schedules and in
8 their 341(a) Creditors Meeting testimony was fraudulent.

9 The Trustee's claim is based on the evidence of (a) the 1998 Tyler Avenue
10 Joint Tenancy Deed, (b) the 2003 home equity loan, and (c) the Lam's financial
11 transactions, as discussed above, plus the rebuttable presumption that the Tyler
12 Avenue Joint Tenancy Deed vested the Lams with an interest in Huang's Tyler
13 Avenue Property.

14 The Lams' evidence taken as a whole and under all the circumstances of this
15 case is sufficient (a) to rebut the presumption that the Lams had any beneficial interest
16 in the Tyler Avenue Property or home equity loan proceeds and (b) to persuade me
17 that the Trustee has failed to prove by a preponderance of the evidence the existence
18 of any ulterior motive on the part of the Lams or any fraudulent intent on the part of
19 the Lams, within the meaning of §§ 727(d)(1) or (d)(2).

20 To the extent that any conclusion of law herein is deemed to be a finding of
21 fact, it is incorporated herein by this reference.

22
23 CONCLUSIONS OF LAW

24 The court has jurisdiction of this adversary proceeding pursuant to 28 U.S.C.
25 §§ 1334 and 157(b)(1).

26 The Trustee has the burden of proof by a preponderance of the evidence. In re

1 Lawler, 141 B.R. 425, 429 (9th Cir. BAP 1992).

2 A claim for denial of a discharge under § 727 is construed liberally in favor of
3 the discharge and strictly against a person objecting to the discharge. See In re
4 Adeeb, 787 F.2d 1339, 1342 (9th Cir. 1986); In re Devers, 759 F.2d 751, 754 (9th Cir.
5 1985). A discharge may be denied or revoked for a false oath only upon a finding of
6 actual intent to hinder, delay or defraud creditors. See Id.

7 The Trustee did not learn of the omissions from the Lams' schedules until after
8 their discharge was deemed entered on July 22, 2005. Accordingly, the claims in the
9 action by the Trustee seeking to revoke the discharge were properly raised under §§
10 727 (d)(1) and (d)(2). In re Dietz, 914 F.2d 161, 164 (9th Cir. 1990).

11 The Lams did not make a false oath within the meaning of § 727 (d) in
12 connection with their bankruptcy schedules or at their Creditors Meeting. The
13 omissions of the Tyler Avenue Property and of the 2003 home equity loan debt do not
14 constitute a false oath within the meaning of § 727(d) because there was no proof of
15 any fraudulent intent on the part of the Lams. Nothing in the Trustee's evidence
16 supports an inference of an intent to defraud the Lams' creditors or to mislead the
17 Trustee or the court by either of the Lams. The Lams did not consider themselves to
18 be owners of the Tyler Avenue Property and did not participate in any way in the 1998
19 first mortgage loan, insurance, or property tax payments. The Lams considered the
20 2003 home equity loan debt to be Huang's debt, not their debt. There is no basis in
21 the evidence to conclude that the Lams derived any personal financial benefit from
22 Huang's 1998 Tyler Avenue Joint Tenancy Deed vesting them with a legal interest in
23 the Tyler Avenue Property or from the 2003 home equity loan secured by the Tyler
24 Avenue Property. In this regard, I find the Lams' exculpatory evidence, however
25 vague, to be more persuasive than the Trustee's evidence.

26 The Lams have a bare legal interest in the Tyler Avenue Property but no

1 beneficial or equitable interest in the Tyler Avenue Property.

2 Under all the circumstances revealed by the evidence, the omission of the Tyler
3 Avenue Property and the 2003 home equity loan debt from the Lams' bankruptcy
4 schedules and the Lams' subsequent testimony at the Creditors Meeting does not
5 establish proof by a preponderance of the evidence of actual intent to defraud the
6 Lams' creditors or to mislead the Trustee or the court. Rather, the Tyler Avenue Joint
7 Tenancy Deed and the later home equity loan have been adequately explained by the
8 Lams.

9 To the extent any finding of fact herein is deemed to be a conclusion of law, it is
10 incorporated herein by this reference.

11 The Lams' attorney is directed to lodge promptly a proposed judgment in favor
12 of the Lams consistent with the foregoing.

13 DATED: 7/24/06

14 
15 THOMAS B. DONOVAN
United States Bankruptcy Judge

**NOTICE OF ENTRY OF JUDGMENT OR ORDER
AND CERTIFICATE OF MAILING**

TO ALL PARTIES IN INTEREST LISTED BELOW:

1. You are hereby notified that a judgment or order entitled:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

was entered on 7/25/06.

2. I hereby certify that I mailed a true copy of the order or judgment to the persons and entities listed below on 7/25/06.

Debtors/ Defendants

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REQUEST FOR SPECIAL NOTICE:

Dated: 7/25/06

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Pat Far
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